

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 09/16/2016

TIME: 03:22:00 PM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Hellmi McIntyre

REPORTER/ERM:

CASE NO: **56-2015-00462910-CU-FR-VTA**

CASE TITLE: **Salient Sec Serv vs Agency Arms LLC**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the Motion for Judgment on the Pleadings under submission, now rules as follows:

The court adopts its tentative as follows:

Defendant's motion for judgment on the pleadings is denied. Defendants did not establish that Plaintiff's 3rd amended complaint is 'preempted' by federal law or that it should have been brought in federal court.

Discussion:

Causes of action:

- 1 - Misappropriation of trade secrets
- 2 - False designation under 15 USC 1125 (a)
- 3 - Conversion - PGT, Niswander
- 4 - Breach of oral contract - PGT and Niswander only
- 5 - Intentional misrepresentation
- 6 - Omission of material fact
- 7 - Unfair business practices

CCP section 438 governs judgment on the pleadings. "A motion for judgment on the pleadings is equivalent to a general demurrer, and the courts treat all properly pleaded material facts in the complaint as true." *Hopp v. City of Los Angeles* (2010) 183 Cal. App. 4th 713, 717. The court's view is that the only cause of action that raises a preemption issue worthy of discussion is C/A 2 for false designation under 15 USC 1125 (a) (Lanham Act) which provides as follows:

"(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which--

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection,

or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act."

There is nothing in the statute that states that an action must be brought in district court. *Winchester Mystery House, LLC v. Glob. Asylum, Inc.* (2012) 210 Cal. App. 4th 579, involved a Lanham Act claim in state court. The court of appeal discussed the law of the Lanham Act and never indicated that it was a claim that could only be raised in federal court.

The clerk is directed to give notice.